And that power of the State was explained in an elaborate opinion and sustained. These propositions were laid down: The company owed its existence as a corporation and its right to exercise the business of telegraphy to the laws of the State under which it was organized; that the privilege of running the lines of its wires over and along the military and post roads of the United States was granted by the act of Congress, but that the statute was merely permissive and conferred no exemption from the ordinary burdens of taxation; that the State could not by any specific statute prevent a corporation from placing its lines along the post roads or stop the use of them after they were so placed, but the corporation could be taxed in exchange from the protection it received from the State "upon its real or personal property as any other person would be." And describing the particular tax imposed it was said:

"The tax in the present case, though nominally upon the shares of the capital stock of the company, is in effect a tax upon that organization on account of property owned and used by it in the State of Massachusetts, and the proportion of the length of its lines in that State to their entire length throughout the whole country is made the basis for ascertaining the value of that property. We do not think that such a tax is forbidden by the acceptance on the part of the telegraph company of the rights conferred by section 5263 of the Revised Statutes or by the commerce clause of the Constitution."

In other words, the lines in Massachusetts were regarded as a part of a system and assessed accordingly.

The statute of Massachusetts came up again for consideration in *Massachusetts* v. *Western Union Telegraph Co.*, (141 U. S. 40,) and the principles announced in *Western Union Telegraph Co.* v. *Massachusetts*, *supra*, were affirmed and followed. See also *Batterman* v. *Western Union Telegraph Co.*, (127 U. S. 411;) *Leloup* v. *Port of Mobile*, (Id. 640.)

These cases establish that in estimating the value of the property of a telegraph company situate within a State it may be regarded not abstractly or strictly locally, but as a part of a system operated in other States, and that the State was not precluded from taxing the property because the State had not created the company or conferred franchise upon it, or because it derived rights or privileges under the act of July, 1866, or was engaged in interstate commerce. Every one of the fundamental propositions, therefore, contended for by plaintiff in error, those decisions declare unsound.

But it is contended that the method of assessment followed in those cases was sustained because they were prescribed by the legislature, and that in the case at bar the method adopted was not prescribed or authorized by the laws of Missouri. The answer is obvious. What the laws of Missouri authorized was competent for the Supreme Court of Missouri to decide, and it decided that the order of the board of equalization was legal under the

constitution and statutes of the State. The decision, constituting as it does an interpretation of the constitution and laws of the State, is not open to dispute here. If it were, it would seem incontestable that the State could either prescribe the method or confer upon its taxing officers the power to adopt a suitable one. And there is nothing in the *Adams Express Company cases*, (166 U. S. 171, 226,) to the contrary.

2. The plaintiff in error asserts that the board of equalization practiced discrimination against it by assessing at a value disproportionate to the value assessed on real and personal property by local assessing officers. This defense was expressed as follows:

"Defendant avers that under the law it was the duty of said board of equalization to adjust and equalize as aforesaid the valuation of all real and personal property in the State of Missouri, among the several counties in the State, and that during the period aforesaid it did so proceed to adjust and equalize such valuations. That said State board of equalization, by common arrangement, understanding and purpose among themselves, in fact did during the period aforesaid, in violation of the constitution and laws of said State of Missouri, with intent to compel defendant to pay a greater proportion of taxes than the owners of other real and personal property in said State of Missouri, assess all property, to wit, other than the property of the telegraph companies, to wit, from thirty-five to forty per cent of its true value, whereby as to taxes levied upon real and personal property other than telegraph property in the State of Missouri, this defendant was unlawfully and wrongfully discriminated against to the extent of sixty per cent of the amount of taxes assessed by said State board of equalization and levied by the taxing officers of the State upon defendant in pursuance of such assessment."

Testimony was introduced to sustain the averments.

The Supreme Court of Missouri held, however, that plaintiff in error could not, even under the cases cited by it, avail itself of the defense. The court said:

"The defendant cannot avail itself of these cases, for the reasons, 1st, that it seeks to raise the question of discrimination by an defense to an action at law to collect the taxes, and thereby collaterally attacks the judgment of the board of equalization; 2d, that such questions can only be raised by a direct attack, in equity, and then only upon the condition precedent that it pays or tenders the amount justly due and only asks to have the collection of the excess restrained. This the defendant has not done in this case. It simply alleges a discrimination or excessive tax, and then seeks to defeat the whole assessment without paying or tendering anything, notwithstanding it admits by its answer and its proofs that it has property in this State subject to taxation of the value of $541,472.40. Upon the authority of the cases relied on by it, this cannot be done."

We concur in this view. The proceedings before the board were *quasi* judicial and the order made by it was within its jurisdiction. It was not void on its face, and cannot be resisted in an action at law. This is the principle announced in the case referred to. In *Stanley* v. *Supervisors of*

Albany is cited, among other cases, *Balfour* v. *City of Portland,* (28 Fed. Rep. 738.) The case is especially pertinent. The action was at law for the recovery of taxes paid under protest which had been levied upon property which, it was charged, had been deliberately overvalued. Recovery was denied. The Circuit Court said:

"The property was subject to taxation by the authority and for the purpose alleged. True, the result reached was erroneous, because of the willful disregard in the proceeding of the law requiring uniformity in the valuation of property for taxation within the jurisdiction of the defendant, still the proceeding being *quasi* judicial, and the subject matter within the jurisdiction of the officers who conducted it, the result reached is so far conclusive that the legality of it cannot be questioned in an action at law to recover back the one-half of the tax as illegal."

So this court said in *Stanley* v. *Supervisors:*

"It is only where the assessment is wholly void, or void with respect to separable portions of the property, the amount collected on which is ascertainable, or where the assessment has been set aside as invalid, that an action at law will lie for the taxes paid, or for a portion thereof. Overvaluation of property is not a ground of action at law for the excess of taxes paid beyond what should have been levied upon a just valuation. The courts cannot, in such cases, take upon themselves the functions of a revising or equalizing board. (*Newman* v. *Supervisors,* 45 N. Y. 676, 687; *Nat'l Bank of Chemung* v. *Elmira,* 53 N. Y. 49, 52; *Bruecher* v. *The Village of Portchester,* 101 N. Y. 240, 244; *Lincoln* v. *Worcester,* 8 Cush. 55, 63; *Hicks* v. *Westport,* 130 Mass. 478; *Balfour* v. *City of Portland,* 28 Fed. Rep. 738.)"

And we think overvaluation of property cannot be a ground of defense at law. In other words, the action of the tax officers, being in the nature of a judgment, must be yielded to until set aside. This can only be done in a direct proceeding. The property owner is in effect a plaintiff, and the condition of relief against the enforcement of the *quasi* judicial order, which he attacks, is a tender of payment of the taxes that he ought to pay. And this condition would still be upon him if he set up overvaluation as an equitable defense to an action brought against him. (*County of Los Angeles* v. *Ballerimo,* 99 Cal. 549, 597.) This certainly would be so in Missouri, under the doctrine expressed by the Supreme Court of the State in the case at bar.

Judgment affirmed.

Mr. Justice Brewer concurs in the result.

True copy.

Test:

Mr. Justice White and Mr. Justice Peckham dissent.

Clerk Supreme Court, U. S.

28152

Supreme Court of the United States.

No. 258.—October Term, 1902.

The Swan and Finch Company, Appellant, vs. The United States. } Appeal from the Court of Claims.

[May 18, 1903.]

Section 22 of the act of August 28, 1894, (28 Stat. 551,) re-enacted as section 30 of the act of July 27, 1897, (30 Stat. 211,) is as follows:

"Sec. 22. That where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties: *Provided*, That when the articles exported are made in part from domestic materials the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall, in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe."

During the years 1895, 1896, 1897, the appellant, a corporation engaged in business as importer, manufacturer and exporter of oils at New York city and elsewhere in the United States, having used in the manufacture of certain kinds of lubricating oils imported rape seed oil on which duties had been paid, placed on board of vessels bound for foreign ports, lubricating oils so manufactured, and claimed a drawback of the duties paid on the imported rape seed oil used therein. The Treasury Department allowed and paid the drawback on such manufactured oils as were shipped to foreign countries and there relanded, but refused to pay any on such as were placed on board for use and consumed in use on the vessels. The appellant brought this suit in the Court of Claims to recover the draw-

backs on the last named oils. That court decided against it, (37 Ct. Claims, 101,) and from such decision this appeal was taken.

Mr. Justice BREWER delivered the opinion of the Court.

The statute allows the drawback "on the exportation," and the question is whether goods placed on board a vessel bound for a foreign port, to be used and consumed on board the vessel during its voyage, and in fact so used and consumed, are exported.

The careful opinion of the Court of Claims, which in general we approve and to which we refer, relieves us from the necessity of an extended discussion. Whatever primary meaning be indicated by its derivation, the word "export," as used in the Constitution and laws of the United States, generally means the transportation of goods from this to a foreign country. "As the legal notion of emigrating is a going abroad with an intention of not returning, so that of exportation is a severance of goods from the mass of things belonging to this country with an intention of uniting them to the mass of things belonging to some foreign country or other." (17 Op. Attys. Gen. 583.)

True, the context may sometimes give to the word a narrower meaning, and in the execution of the administrative affairs of government it may have been applied to cases in which there was not in the full sense of the term an exportation, yet these are exceptions and do not destroy its general signification. It cannot mean simply a carrying out of the country, for no one would speak of goods shipped by water from San Francisco to San Diego as "exported," although in the voyage they are carried out of the country. Nor would the mere fact that there was no purpose of return justify the use of the word export. Coal placed on a steamer in San Francisco to be consumed in propelling that steamer to San Diego would never be so designated. Another country or State as the intended destination of the goods is essential to the idea of exportation.

Counsel for appellant, after quoting from several dictionaries, say:

"These definitions show that the word has two meaning:

"(1) Its primary, general or essential meaning—to carry or send out of a place; and

"(2) Its secondary, specific or especial meaning—to send out from one country to another.

"Of all goods sent out of this country but a small proportion fails to reach a foreign country; the amount consumed or lost at sea is minute in comparison. In ordinary use, therefore, the foreign destination is implied. We claim that, however usual, it is not essential, and that here the original and primary definition of the word should be applied to goods carried out of the country on vessels in the foreign trade, although they never reach a foreign country."

To this we are unable to yield our assent:

First. The fact that the words export and exportation are, as we have indicated, generally used in the sense of transportation from this to a foreign country, makes against the contention that it is here used in a different sense.

Second. The purpose with which the drawback statute was enacted is against it. In *Campbell* v. *United States*, (107 U. S. 407, 413,) we said:

"The purpose of the drawback provision is to make duty free, imports which are manufactured here and then returned whence they came or to some other foreign country—articles which are not sold or consumed in the United States."

So also in *Tidewater Oil Company* v. *United States*, (171 U. S. 210, 216):

"The object of the section was evidently not only to build up an export trade, but to encourage manufactures in this country, where such manufactures are intended for exportation, by granting a rebate of duties upon the raw or prepared materials imported, and thus enabling the manufacturer to compete in foreign markets with the same articles manufactured in other countries."

Third. The uniform construction placed by the department charged with the execution of the statute has been against it.

Fourth. Being a governmental grant of a privilege or benefit it is to be construed in favor of the government and against the party claiming the grant. Where the burden is placed upon a citizen, if there be a doubt as to the extent of the burden it is resolved in favor of the citizen, but where a privilege is granted any doubt is resolved in favor of the government. In *Hartranft* v. *Wiegmann*, (121 U. S. 609, 616,) the one rule was thus stated.

"We are of opinion that the decision of the Circuit Court was correct. But, if the question were one of doubt, the doubt would be resolved in favor of the importer, 'as duties are never imposed on the citizen upon vague or doubtful interpretations.' (*Powers* v. *Barney*, 5 Blatch. 202; *United States* v. *Isham*, 17 Wall. 496, 504; *Gurr* v. *Scudds*, 11 Exch. 190, 191; *Adams* v. *Bancroft*, 3 Sumner, 384.)" See also *American Net & Twine Company* v. *Worthington*, (141 U. S. 468, 474.)

On the other hand, in *Hannibal &c. Railroad Company* v. *Packet Company*, (125 U. S. 260, 271,) we said, citing several authorities:

"But if there be any doubt as to the proper construction of this statute, then that construction must be adopted which is most advantageous to the interests of the government. The statute being a grant of a privilege, must be construed most strongly in favor of the grantor."

For these reasons we think the judgment of the Court of Claims was correct, and it is

Affirmed.

Mr. Justice BROWN and Mr. Justice PECKHAM dissented.